

RESOLUTION # 157-5.15

RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT BETWEEN THE
TOWNSHIP OF NORTH BRUNSWICK AND HEARTHWOOD AT NORTH BRUNSWICK
CONDOMINIUM ASSOCIATION, INC AND RENAISSANCE VILLAGE I CONDOMINIUM
ASSOCIATION, INC.

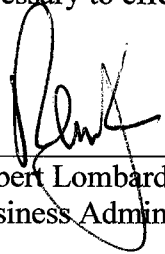
WHEREAS, Hearthwood at North Brunswick Condominium Association, Inc. and Renaissance Village I Condominium Association, Inc. filed a complaint in the Superior Court of New Jersey against the Township of North Brunswick on June 4, 2013 under Docket No.: MID-L-3637-13 challenging the procedure for the way that they were billed for water and sewer services by the Township; and


WHEREAS, the parties have agreed to amicably resolve the litigation by applying a credit towards future condominium association bills and modifying the billing procedure for these two condominium associations; and

WHEREAS, terms of the settlement agreement between the parties are contained in that certain settlement agreement and release which contains a confidentiality clause.

NOW, THEREFORE, BE IT HEREBY RESOLVED, by the Township Council of the Township of North Brunswick, County of Middlesex, State of New Jersey, that the settlement agreement and release between the Township of North Brunswick and Hearthwood at North Brunswick Condominium Association, Inc. and Renaissance Village I Condominium Association, Inc. is hereby authorized and approved subject to the review and approval of the Township Attorney; and

BE IT FURTHER RESOLVED, that the Mayor and Township Clerk are hereby authorized to execute said settlement agreement and to execute any and all further documents necessary to effectuate the settlement of this matter.

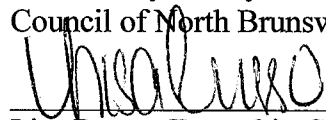

Robert Lombard
Business Administrator


Ronald H. Gordon, Esq.
Township Attorney
Certified as to Form

RECORDED VOTE:

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
NARRA	A			
NICOLA 1	/			
DAVIS	/			
CORBIN	/			
SOCIO 2	/			
ANDREWS	A			
MAYOR WOMACK				

I do hereby certify that the foregoing is a true copy of a Resolution passed by the Township Council of North Brunswick at a meeting duly held on the 4th day of May , 2015.



Lisa Russo, Township Clerk

Dated: May 4, 2015

C. R. Gordon, Esq.

**HEARTHWOOD AT NORTH BRUNSWICK CONDOMINIUM ASSOCIATION, INC.
RENAISSANCE VILLAGE I CONDOMINIUM ASSOCIATION, INC.
TOWNSHIP OF NORTH BRUNSWICK
AMERICAN WATER ENTERPRISES, INC.**

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made by and among Hearthwood at North Brunswick Condominium Association, Inc., a New Jersey non-profit corporation, with offices at c/o Premier Management Associates, 850-870 Route 1 North, North Brunswick, New Jersey 08902; Renaissance Village I Condominium Association, Inc. with offices at c/o Midlantic Property Management, 315 Raritan Avenue, Highland Park, NJ 08904 (collectively referred to herein as the "Associations"); The Township of North Brunswick, with offices at 710 Hermann Road, North Brunswick, New Jersey 08902 (the "Township"); and American Water Enterprises, Inc., on its behalf and on behalf of American Water Services, Inc./ JJS Management Services, LLC , with offices at 13 Briarcrest Square, Hershey, Pennsylvania (collectively referred to herein as "AWE").

WHEREAS, the Associations disputed the manner in which they were billed for water and sewer services by the Township and AWE as set forth in the complaint filed on June 4, 2013 captioned, Hearthwood at North Brunswick Condominium Association, Inc and Renaissance Village I Condominium Association Inc. v. The Township of North Brunswick and American Water Works Company, Inc., MID-L-3637-13 (the "Lawsuit"); and

WHEREAS, the Associations, the Township, and AWE (collectively the "Parties") have agreed to amicably resolve the Lawsuit, and;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **Effective Date.** The Effective Date of this Agreement is May 1, 2015.
2. **Payment.** Upon the Effective Date of this Agreement, the Township shall direct AWE to apply a credit toward payment due on the bills for water and sewer services issued to the Associations in the amount of \$12,000.00 per year for five years for a total credit of \$60,000.00. The credit shall be applied as follows: Hearthwood at North Brunswick Condominium Association shall receive an annual credit of \$4,800.00 and Renaissance Village I Condominium Association shall receive an annual credit of \$7,200.00. The Township and AWE may pro rate this credit and divide the annual credit by the number of bills issued each year and apply the apportioned credit to each bill issued to the Associations or in some other manner that they decide, in their sole discretion, is most efficient and cost-effective, as long as a total credit of \$60,000.00 (\$24,000.00 to Hearthwood at North Brunswick Condominium Association, Inc and \$36,000.00 to Renaissance Village I Condominium Association, Inc.) is applied to the Associations during the five year period commencing from the Effective Date of this Agreement.
3. **Billing Modifications.** Commencing upon the Effective Date of this Agreement, the Township and AWE will implement billing software modifications in accordance with the Specifications attached as **Exhibit A** and incorporated herein.
4. **Limited Release by the Associations.** Except for any obligations set forth in this Agreement, the Associations, on behalf of themselves and their respective officers, directors, employees, members, and agents hereby release and discharge Township and AWE and all of their subsidiaries, affiliates and related entities, any and all past and present officers, directors, members, shareholders, agents, and employees from and against any and all liabilities, damages, promises, covenants, agreements, causes of action, judgments, claims, or determinations in law or in equity or any costs or expenses including, any and all claims which the Associations ever

had, now have, or hereinafter may have, whether known or unknown, against the Township or AWE, from the beginning of the world to the Effective Date of this Agreement, relating to billing the Associations for water and sewer services, including but not limited to those facts, circumstances, and claims identified in the pleadings filed in the Lawsuit.

5. **No Admission of Liability.** This Agreement and the Exhibit(s) attached hereto shall not constitute an admission of liability or serve as evidence of liability on the part of the Associations, the Township, or AWE.

6. **Confidentiality.** The Parties acknowledge and agree that unless directed to do so by court order or for other legally obligated purposes, they will not disclose, either directly or indirectly, in any manner whatsoever, any information regarding the terms of this Agreement to anyone, unless the Party making the disclosure has been compelled to do so pursuant to the order of a court of competent jurisdiction or as necessary to enforce the terms of this Agreement. In order to allow the other Parties to protect their interests and the confidentiality of this Agreement, any Party served with a request to make disclosure of the terms of this Agreement shall, within seven (7) days of the receipt of a request which could lead to a court order compelling disclosure, notify the other Party of the request, unless seven (7) days-notice would not permit sufficient time in which to allow the other Parties to assert any interest in prohibiting disclosure of the terms or negotiations concerning this settlement, in which case the Party being requested to make the disclosure shall give notice to the other Parties as soon as possible. Notwithstanding anything to the contrary in this paragraph, the Parties hereby agree that they may disclose the terms of this Agreement without prior notice as follows: (1) to regulatory governmental authorities as may be required by applicable rules and regulations; (2) to any taxing authority; and (3) the Associations may disclose this Settlement Agreement and Release as necessary to

conduct their business; and the Associations and/or their governing board and/or their property management agent may make disclosure to the Associations' professionals including their auditing firms.

7. **Delivery of Dismissal with Prejudice.** Counsel for the Associations shall provide opposing counsel with an executed dismissal with prejudice of the Lawsuit upon receipt of a copy of this Agreement signed by the Township and AWE. The Associations hereby authorize counsel for the Township to file said dismissal with the court and enter same as a matter of record. The Parties expressly reserve and do not waive their right to file a lawsuit against each other for breach of this Agreement.

8. **Intent.** It is the intent of this Agreement to implement the agreed upon method and manner of billing the Associations for water and sewer services. To that end, the Township and AWE agree that the terms of this Agreement are binding upon their successors and/or assigns. In addition, the Township and AWE will incorporate the terms of this Agreement into any new contract between them for the provision and billing for water and sewer services to the Associations, and the Township will incorporate the terms of this Agreement into any future contract related to the provision and billing for water and sewer services to the Associations. If there is any change to the Township's ordinances after this Agreement is executed, to the extent permitted by law, the Township will charge and bill the Associations for water and sewer services as if each unit was individually metered and at the same rates as other condominiums within the Township, meaning that the per unit charge for water and sewer services for the Associations will be the same as the per unit charge for other condominium unit owners located within the Township.

9. **Miscellaneous**

- a. Simultaneous with the signing of this Agreement, each Association shall also adopt a resolution (attached as Exhibit "B") by which the Board of Trustees authorizes the execution of this Agreement and ratifies the settlement contemplated herein.
- b. The Township, AWE, and the Associations understand and agree that they were represented by separate and independent legal counsel in connection with the settlement of any and all claims among them which are addressed in this Agreement, as well as the drafting and execution of this Agreement. Each Party's respective legal counsel has fully explained the terms of this Agreement to their respective clients. The Parties understand and agree that this is a full and final settlement with respect to the matters included within this Agreement. The Parties understand and agree that they are entering into this Agreement in order to avoid the time and expenses of continued litigation related to the matters included within this Agreement and the Lawsuit only.
- c. The Associations accept the promises and covenants set forth in the Agreement in full satisfaction and discharge of all rights and/or claims now and forever due and owing with respect to the matters included within this Agreement and the Lawsuit only.
- d. This Agreement shall be binding upon all successor Boards of Trustees for the Associations, their successors and/or assigns.
- e. Each Party will pay its own legal fees and other costs and expenses incident to this Agreement and the Lawsuit.

- f. This Agreement including any Exhibit(s) attached hereto contains the entire agreement among the Parties as to the settlement of their disputes, with respect to the matters included within this Agreement only, and no amendment, modification or addendum to this Agreement shall be effective unless in writing dated subsequent to the date hereof and executed by the duly authorized officers of the Parties. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this paragraph and shall be deemed an essential term of the Agreement.
- g. This Agreement is to be construed on a parity basis. This Agreement is the result of a negotiated settlement, and the identity of the draftsman will not be utilized in interpreting the meaning of any of the provisions of this Agreement.
- h. The individuals executing this Agreement on behalf of the respective Parties represent that they are authorized to execute this Agreement on behalf of their respective municipal entity, corporations or limited liability companies in accordance with the validly adopted corporate or limited liability company resolution of the Board of Directors or Board of Trustees of each of the respective corporations or limited liability companies. The Parties represent that they have the requisite authority and ability to implement the terms of this Agreement.
- i. All notices, requests or other communications required or permitted hereunder will be given in writing and will be deemed to have been duly given if delivered by facsimile transmission on the date set forth in the telecopier-generated confirmation, or if delivered by hand on the date of receipt (or refusal), and if given by mail or Federal Express or similar nationally-recognized expedited

overnight commercial courier, when deposited in the United States mail or delivered to Federal Express or similar nationally-recognized expedited overnight commercial courier, addressed to the recipient of the notice, postage paid and registered or certified mail (if mailed), or with all freight charges paid (if by Federal Express or other courier) to the following address(es):

If to the Associations:

Hearthwood at North Brunswick
Condominium Association, Inc.,
c/o Premier Management Associates,
850-870 Route 1 North,
North Brunswick, New Jersey 08902

Renaissance Village I Condominium Association, Inc.
c/o Midlantic Property Management
315 Raritan Avenue
Highland Park, NJ 08904

With a copy to:

McGovern Legal Services, LLC
Attn: Patricia Hart McGlone, Esq.
850 U.S. Highway 1
North Brunswick, NJ 08902

and

Tomas Giaimo, Esq.
Giaimo & Associates
97 E. River Road
Rumson, NJ 07760

If to the Township:

The Township of North Brunswick
Attn:
700 Hermann Drive
North Brunswick, NJ 08902

With a copy to:

Ronald H. Gordon, Esq.
DeCotis, Fitzpatrick & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd., Suite 31
Teaneck, NJ 07666

If to AWE:

American Water Enterprises, Inc.,
ATTN: General Counsel
330 Fellowship Road
Mt. Laurel, New Jersey 08054

With a copy to:

Francis X. Manning, Esq.
Stradley, Ronon, Stevens & Young, LLP
Liberty View
457 Haddonfield Road, Suite 100
Cherry Hill, NJ 08002

or to such other address as any Party may have designated for itself by written notice to the other Parties in the manner herein prescribed, except that notices of changes of address will be effective only upon receipt.

- j. The captions and other headings contained in this Agreement in connection with articles, sections, paragraphs or other subdivisions contained herein are inserted for convenience of reference only and are in no way to be construed as part of this Agreement or as limitations on the scope of the particular articles, sections, paragraphs, other subdivisions to which they refer, and will not affect the interpretation or meaning of this Agreement.
- k. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey.

- l. The Parties agree to cooperate and execute any and all agreements or other documents that may be necessary in order to effectuate the intent of this Agreement.
- m. This Agreement may be executed in counterparts. For purposes of this Agreement, a scanned, e-mailed, or faxed signature is deemed equivalent to an original signature.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates indicated.

Attest:

HEARTHWOOD AT NORTH
BRUNSWICK CONDOMINIUM
ASSOCIATION, INC.

By: _____, President

Date: _____

Attest:

RENAISSANCE VILLAGE I
CONDOMINIUM ASSOCIATION, INC.

By: _____, President

Date: _____

By: _____

Date: _____

By: _____

Date: _____

Date: _____

Exhibit A

BILLING MODIFICATIONS HEARTHWOOD / RENAISSANCE V TOWNSHIP OF NORTH BRUNSWICK

1. The billing for all Water and Sewer accounts for Renaissance and all Water and Sewer accounts for Hearthwood will be done on a quarterly billing basis.
2. All of the Water and Sewer accounts for both Renaissance and Hearthwood will be billed using the following methodology:
 - a. The Service Charge will be billed based on the size of the meter as is currently being done, except on a quarterly rather than monthly basis, one quarter of the annual amount for quarterly read meters as specified for the meter size in the North Brunswick Water Ordinance (currently Chapter 352). The amount of the quarterly service charge to be billed will be as set forth in the North Brunswick Water Ordinance at the time of the billing. There is no current separate service charge for sewer billing.
 - b. The total amount of water used in a quarter (3 month period) will be used to calculate the Water and Sewer Consumption Charges on a new method of calculating the amount of water to be billed at each of the three Consumption Tiers as follows:
 - i. The amount of consumption for each account to be billed in the first Consumption Tier (Tier 1) will be the lesser of the Total Quarterly Consumption or the total amount of Consumption to be billed in the first Consumption Tier set forth in the North Brunswick Water Ordinance and the North Brunswick Sewers Ordinance (currently Chapter 276) at the time of the billing, multiplied by the number of units served through the master meter for that account. The current Tier 1 usage is for the first 1,200 Cubic Feet for both water and sewer billing. The rate the consumption in Tier 1 will be billed at will be as set forth in the North Brunswick Water and Sewers Ordinances at the time of the billing for Tier 1.
 - ii. The amount of consumption for each account to be billed in the second Consumption Tier (Tier 2) will be the lesser of the Total Quarterly Consumption less the amount of consumption billed for in Tier 1 or the total amount of Consumption to be billed in the second Consumption Tier (Tier 2) set forth in the North Brunswick Water and Sewer Ordinances at the time of the billing, currently the next 2,400 Cubic Feet (1,201 Cubic Feet through 3,600 Cubic Feet) for both water and sewer billing, multiplied by the number of units served through the master meter for that account. The rate the consumption in Tier 2 will be billed at will be as set forth in the North Brunswick Water and Sewers Ordinances at the time of the billing for Tier 2.
 - iii. The amount of consumption for each account to be billed in the third Consumption Tier (Tier 3) will be the Total Quarterly Consumption less the sum of the amount of consumption billed for in Tier 1 and in Tier 2 used for both water and sewer billing. The rate the consumption in Tier 3 will be billed at will be as set forth in the North Brunswick Water and Sewers Ordinances at the time of the billing for Tier 3.

Exhibit B

HEARTHWOOD AT NORTH BRUNSWICK CONDOMINIUM ASSOCIATION, INC.

**RESOLUTION NO. _____
RELATING TO SETTLEMENT WITH TOWNSHIP OF NORTH BRUNSWICK
AND AMERICAN WATER ENTERPRISES, INC.**

WHEREAS, the Board of Trustees (the "Board") of Hearthwood at North Brunswick Condominium Association, Inc. (the "Association") is charged by the Association's Master Deed and By-laws with responsibility and authority to manage and oversee the Common Elements of the Association; and

WHEREAS, the Board is desirous of having the Township of North Brunswick and American Water Enterprises, Inc. modify its billing methods for water and sewer services; and

WHEREAS, the Association filed a lawsuit entitled Hearthwood at North Brunswick Condominium Association, Inc and Renaissance Village I Condominium Association Inc. v. The Township of North Brunswick and American Water Works Company, Inc., MID-L-3637-13; and

WHEREAS, the Board having agreed to resolve their differences as set forth in a Settlement Agreement and Release between The Township of North Brunswick, American Water Enterprises, Inc. and American Water Services, Inc./ JSS Management Services, LLC (the "Settlement Agreement") dated _____, 2015; and

WHEREAS, the Board is satisfied that the Settlement Agreement accurately states the understandings reached with the parties;

NOW, THEREFORE, be it resolved:

1. That the President of the Board be and is hereby authorized and empowered to execute the Settlement Agreement and Release on behalf of the Board and to bind the Board as to all the issues pertaining to the items addressed in the Settlement Agreement.

2. That the Board ratifies and approves the terms and provisions of the Settlement Agreement in the settlement of this matter.

3. That the individual Members of the Association are bound by the terms of this Resolution and the Settlement Agreement as they pertain to the Common Elements of the Association.

Duly adopted this _____ day of _____, 2015

Certified to be a true copy of a
Resolution adopted on

_____, 2015.

_____, Secretary

HEARTHWOOD AT NORTH BRUNSWICK CONDOMINIUM ASSOCIATION, INC.

Resolution Type: Special No. _____

Pertaining To: Settlement with Township of North Brunswick and American Water

Duly adopted at a meeting of the Board of Trustees of Hearthwood at North Brunswick Condominium Association, Inc. held this ____ day of _____, 2015

Officer

Vote:

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
_____, Trustee	_____	_____	_____	_____
_____, Trustee	_____	_____	_____	_____
_____, Trustee	_____	_____	_____	_____
_____, Trustee	_____	_____	_____	_____
_____, Trustee	_____	_____	_____	_____

Attest:

Hearthwood at North Brunswick
Condominium Association, Inc.

, Secretary

, President

Book of Minutes -
Book of Resolutions:

Policy

Book No.

Page No.

Insert Resolution for Renaissance Village I Condominium Association, Inc.